Supreme Court of the United States

OCTOBER TERM 1959

NO. 19

UNITED MINE WORKERS OF AMERICA and
UNITED MINE WORKERS OF AMERICA,
DISTRICT 28 PETITIONERS

V.

BENEDICT COAL CORPORATION RESPONDENT

RESPONDENT'S BRIEF

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RESPONDENT'S BRIEF

I. PRELIMINARY STATEMENT

Your respondent accepts the petitioners' presentation of the opinions below, the jurisdiction of this Court, the statutes involved and the question presented as contained in Paragraphs I, II, III, and IV of petitioners' brief. In this Brief the Benedict Coal Corporation will be referred to as as "Benedict", the United Mine Workers of America will be referred to as "UMW", and United Mine Workers of America, District 28, will be referred to as "District 28".

II. STATEMENT OF THE CASE

1. The Trial Proceedings and the Sixth Circuit's Judgment

Your respondent adds the following to this portion of the petitioners' statement of the case.

The 1950 contract contained provisions for grievance machinery procedures for the settlement of disputes. (R. 104a, 105a). The miscellaneous section of the 1950 agreement had this further provision by which the parties agreed that any and all disputes, etc., would be settled and determined exclusively by the machinery provided:

> "3. The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement; or; if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry." (R. 106a)

The miscellaneous section of the 1950 Agreement had this further clause:

> "4. The United Mine Workers of America and the Operators signatory hereto affirm their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppages of work by strike or lockout pending adjustment or adjudication of disputes and grievances in the manner provided in this agreement." (R.106a)

The 1952 Agreement amended its miscellaneous section by striking sub section 1 and amending sub-section 3 to read as follows:

> "The United Mine Workers of America and the Operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this Agreement unless national in character in which event the

parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts." (R. 113a, 114a)

In its answer and cross claim with amendments thereto, Benedict also alleged facts showing that the strikes of February 8, 1952, April 25 and 26, 1952, (Campbell Strikes) and that the strike of May 18-30, 1953, (The Big Mountain Strike) were secondary boycotts in violation of Section 303 of the Labor Management Relations Act, in addition to being breaches of the contract. (R. 19a, 31a, 32a, 45a). The trial court in its charges submitted to the jury the additional issue as to whether these above noted strikes were also secondary boycotts. (R. 722a, 723a, 724a, 729a, 730a, 731a)

The Circuit Court of Appeals, having found these strikes to be contractual violations, found it unnecessary to consider whether these particular strikes also violated the Labor Management Relations Act of 1947. (R. 767a, UMWA, et al v. Benedict Coal Corporation, 259 Federal (2d), 346, 351).

2. THE FACTS

a. The alleged Strike Activity and The Sixth Circuit's Holdings Relative Thereto

Your respondent adds the following to the above portion of the petitioners' statement of the facts. It is true that in each of the strike situations the miners returned to work. However in some of these situations, before the disputes were settled, the company had to "cave in". (R 160a, 173a, 174a)

In all cases except the water strike Benedict tried to arbitrate and they were turned down. (R. 215a).

b. The Collective Bargaining History and the 1950 Agreement

Your respondents deny that the 1957 agreement "by

affirmative recitals made it positive that a strike or work stoppage was no longer a violation of the "collective bargaining agreement", as stated on Page 9 of Petitioners' Brief. The 1947 Agreement merely repealed the "no-strike" provision in district or local agreements and provided further:

> "Any and all provisions in either the Appalachian Joint Wage Agreement of June 19, 1941, or the National Bituminous Coal Wage Agreement of April 11, 1945, containing any "no strike" or "Penalty" clause or clauses or any clause denominated "Illegal Suspension of Work" are hereby rescinded, cancelled, abrogated and made null and void." (R. 129a)

The rescission clause of previous "no strike" agreements was also in the 1950 agreement. (R 106a). These changes were not ignored by the Sixth Circuit which in its opinion stated:

> "This conclusion does not make meaningless the express abrogation of a 'no strike clause in the 1950-52 agreement. The right to strike was preserved with respect to all disputes not subject to settlement by other methods made exclusive by the agreement. Moreover, the Unions remained (fol. 770) free from liability for spontaneous or "wildcat" strikes. Such spontaneous strikes would be the kind of "stoppages" and "suspensions of work" which the agreement made subject to the settlement procedure therein provided." (R 776a, UMWA et al vs. Benedict Coal Corporation 259 Fed. 2d 346).

There was no recognition in the 1950 Agreement of the right to strike if the strike was for the purpose of settling a dispute. The 1950 Agreement expressly stated that all disputes would be settled **exclusively** by the machinery provided in the contract (R. 106a). (Bold face ours)

SUMMARY OF ARGUMENT

The contracts involved contain express, obligatory and

exclusive procedures for the settlement of disputes. The calling or use of a strike as an alternative method of settling disputes is a violation of the contracts.

The intent and purpose of the contracts involved as shown in the Preamble to the 1950 contract is to promote and improve industrial and economic relationship in the bituminous coal industry. The interpretation rendered by the Sixth Circuit is in keeping with this intent and purpose, and with the applicable legal principles requiring a regard for such intent and purpose. The adoption of the appellants' interpretation of the contract would make meaningless the express language of the 1950 contract which requires that all disputes be settled exclusively by the machinery provided in the contract. The subsequent provisions in the 1952 contract would also be made meaningless. The interpretation which the parties themselves have put upon the 1950 contract indicates that strikes for dispute settling purposes were considered violations of the contracts.

The petitioner's basic contention is that the clause in the 1950 contract which "rescinded, abrogated and made null and void" previous "no-strike" clauses gave to the union a positive right to strike even though the strikes are used as a method of settling disputes. This rescission clause in the 1950 contract merely puts the parties in the same position as though there had been no previous "no-strike" clauses. This rescission clause gave no right to strike if the strike is used to settle disputes in violation of other positive provisions of the contracts.

The petitioners rely upon the majority opinion in International Union, United Mine Workers of America versus National Labor Relations Board, 257 Fed. 2d 211. The interpretation of the contract by the two judges constituting the majority in that case is at variance with the interpretation given the same contract by the dissenting judge and the National Labor Relations Board in that same case, and by the Sixth Circuit in this case. It is also at variance with interpretations given to similar

clauses of other contracts by the Fourth Circuit and the First Circuit. This interpretation relied on by petitioners also fails to give effect to all the language and to every clause of the contracts involved. The case of NLRB v. Lion Oil Company, 352 U.S. 282, relied on by petitioners, is not in point.

ARGUMENT

(1). A strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure, constitutes a violation of the agreement.

The issue in this case is not whether a mere strike is a breach of the 1950 and 1952 contracts, but the question is whether the use of strikes to settle disputes or enforce demands is a breach of the above agreements. Your respondent contends that strikes called or used for such purposes are direct violations of positive provisions of the contracts.

The pertinent parts of the 1950 contract involved on this question are as follows:

> **"Settlements of Local and District Disputes"**
>
> Should differences arise between the Mine Workers and the Operators as to the meaning and application of the provisions of this Agreement, or should differences arise about matters not specifically mentioned in this Agreement, or should any local trouble of any kind arise at the mine, an earnest effort shall be made to settle such differences immediately:
>
> 1. Between the agrieved party and the mine management.
>
> 2. Through the management of the mine and the Mine Committee.
>
> 3. Through District representatives of the United Mine Workers of America and a commissioner representative (where employed) of the coal company.

4. By a board consisting of four members, two of whom shall be designated by the Mine Workers and two by the Operators.

5. Should the board fail to agree the matter shall, within thirty (30) days after decision by the board, be referred to an umpire to be mutally agreed upon by the Operator or Operators affected and by the duly designated representatives of the United Mine Workers of America, and the umpire so agreed upon shall expeditiously and without delay decide said case. The decision of the umpire shall be final. Expenses and salary incident to the service of an umpire shall be paid equally by the Operator or Operators affected and by the Mine Workers.

A decision reached at any stage of the proceedings above outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement." (R104a, 105a).

* * * * * * *

3. The contracting parties agree that, as a part of the consideration of this contract, any and all disputes, stoppages, suspensions of work and any and all claims, demands or actions growing therefrom or involved therein shall be by the contracting parties settled and determined exclusively by the machinery provided in the "Settlement of Local and District Disputes" section of this agreement; or if national in character, by the full use of free collective bargaining as heretofore known and practiced in the industry.

4. The United Mine Workers of America and the Operators signatory hereto affirm their intention to maintain the integrity of this contract and to exercise their best efforts through available disciplinary measures to prevent stoppage of work by strike or lockout pending adjustment or adjudication of dis-

putes and grievances in the manner provided in this agreement." (R106a).

Subsection 4 of the 1950 agreement was struck out of the 1952 agreement and Subsection 3 was amended to read as follows:

"3. The United Mine Workers of America and the Operators agree and affirm that they will maintain the intergrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the "Settlement of Local and District Disputes" section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts." (R113a, 114a).

The Sixth Circuit correctly held that strikes to settle disputes were breaches of the above portions of the contracts, in the following portion of their opinion:

"With all respect for the majority view expressed in the latter decision, we agree with the dissenting judge in that case, and with the decisions in the Haislip and Mead cases; that a strike to settle a dispute which a collective bargaining agreement provides shall be settled by an exclusive and obligatory alternative procedure constitutes a violation of the agreement." United Mine Workers of America et al vs. Benedict Coal Corporation, 259 Fed. Rep 2d, 346 (R. 766)

(a). The purpose and intent of the contracts.

The interpretation by the Sixth Circuit is in keeping with the purpose and intent of the contracts. The preamble to the 1950 contract sets out its intent and purpose and among other things provides:

> "It is the intent and purpose of the parties hereto that this agreement will promote and improve industrial and economic relationship in the bituminous coal industry and to set forth herein the basic agreements covering rates of pay, hours of work and conditions of employment to be observed between the parties, and shall cover the employment of persons employed in the bituminous coal mines covered by this agreement." (R 89a)

This portion of the 1950 contract was preserved by the 1952 contract. (R 108a). The industrial and economic relationship in the bituminous coal industry is promoted by the settlement of disputes by contractual grievance machinery rather than by brutal and wasteful strike methods. That is the intent and the purpose of the contract. A construction of the contract which permits the use of strikes as an alternative method of settling disputes is in derogation of the positive and clear terms of the contract and in direct opposition to its intent and purpose. Such a construction as urged by the petitioners would be a deterioration and retrogression of the industrial and economic relationship in the bituminous coal industry.

The intent of the contracting parties was well expressed by Judge Burger in his dissenting opinion in International Union, United Mine Workers of America et al vs. National Labor Relations Board, 257 Fed. 2d, 211:

> "They are the words of enlightened union and management leaders who intend to abandon brutal and wasteful methods and substitute negotiation and arbitration as a means of settling disputes."

(b). The governing principles of law.

The interpretation of the contract by the Sixth Circuit is in keeping with established principles of law. In 12 Am. Jur., 776:

> "The spirit and purpose of an agreement as well as its letter must be regarded in the interpretation and

application thereof."

See also Restatement of the Law of Contracts, Section 236(b).

In 12 Am. Jur. 773:

"All provisions should, if possible, be so interpreted as to harmonize with each other."

See also Restatement of the Law of Contracts, Section 235(c).

The adoption of the petitioners' construction of these contracts would make meaningless the grievance machinery clauses of the contracts, subsections 3 and 4 of the miscellaneous section of the 1950 contract and subsection 3 of the Miscellaneous Section of the 1952 contract. These portions of the contracts use positive words and the duties assumed thereunder are not mere implications. The term "exclusively" used in the 1950 contract has a positive meaning. The third paragraph in the miscellaneous section in the 1952 contract has a positive meaning. To imply that the contracts permit the use of strikes as an alternative method of settling disputes would void these express and positive provisions. Such an interpretation would be variance with settled principles of law. In 12 Am. Jur. 774:

> "Such an interpretation must be adopted as will render the whole agreement operative, if it can consistently and reasonably be done. So far as possible, effect will be given to all the language and to every clause of the agreement. No word should be rejected as mere surplusage if the court can discover any reasonable purpose thereof which can be gathered from the whole instrument. An interpretation which gives reasonable meaning to all its provisions will be preferred to one which leaves a portion of the writing useless or inexplicable."

In Restatement of the Law of Contracts, Section 236,

"**Secondary Rules Aiding Application of Standards of**

Interpretation

Where the meaning to be given to an agreement or to acts relating to the formation of an agreement remains uncertain after the application of the standards of interpretation stated in Section 230, 233, with the aid of the rules stated in Section 235, the following rules are applicable:

(a) An interpretation which gives a reasonable, lawful and effective meaning to all manifestations of intention is preferred to an interpretation which leaves a part of such manifestations unreasonable, unlawful or of no effect.

(c). The interpretation by the parties.

It is also apparent that the parties themselves considered strikes or work stoppages for the purpose of settling disputes as contractual violations. During the trial in the District Court the petitioners introduced in evidence a letter dated October 24, 1951, from the officers of the United Mine Workers of America to all members, committeemen and officers of all local unions, United Mine Workers of America:

"Dear Sirs and Brothers:

During the past year a wave of unauthorized local strikes or work stoppages occured in various Districts. In nearly all of these strikes or stoppages the machinery incorporated in joint agreements for the consideration and disposition of grievances was not invoked. The International Executive Board, now in session in Washington, D. C., has given consideration to the implications involved in these strikes or stoppages and reached the following conclusion theron:

"1. These unauthorized strikes adversely affect the contractual relationships between the United Mine Workers of America and the Coal operators.

"2. Unauthorized strikes cause unnecessary loss of earnings to our members, work hardship upon their

families and are not beneficial to the interests of the communities wherein they occur.

"3. Unauthorized strikes reflect discredit upon our organization's sixty-year record of honoring contractual provisions and result in strained labor relations between the parties signatory to the joint agreements.

"4 In some instances these unauthorized work stoppages have created situations wherein union operations have not been able to meet their commitments and this resulted in these operations losing business to competitors.

"5. The joint agreements between our organization and the coal operators contain established machinery for the adjustment of disputes between the parties signatory thereto which eliminates the necessity for calling strikes.

"6. These unauthorized strikes not only endanger the stability of the coal industry, but encourage the operators to demand punitive clauses in wage agreements.

"On the basis of the foregoing conclusions, the International Executive Board, by unanimous vote, urges all members, local union officers and committeemen, district and international officials to not only refrain from participation in these unauthorized strikes, but to use their efforts and influences to prevent occurrence of said unauthorized strikes in contravention of the International Constitution and in direct opposition to the established policies of the United Mine Workers of America.

"We express the hope that the policies outlined herein will be followed in the best interest of our organization and our membership.

"On behalf of the International Executive Board, United Mine Workers of America.

" s John L. Lewis
President.

" s Thomas Kennedy,
Vice-President.

" s John Owens,
Secretary-Treasurer."

(Def. Exhibit 31, R 500a, 501a.) (Bold face supplied.)

Benedict's Vice-President, Guy B. Darst, also considered these stoppages as contract violations; as he had threaten-to sue several times. (R 205a).

In Restatement of the Law of Contracts, Section 235 (e):

"(e) If the conduct of the parties subsequent to a manifestation of intention indicates that all the parties placed a particular interpretation upon it, that meaning is adopted if a reasonable person could attach it to the manifestation."

(d.) The basic fallancy in petitioner's position.

The petitioners' basic contention is that the cancellation of previous "no-strike" clauses make strike activity permissive even though the strikes are used to settle disputes and enforce claims against the company and even though such use of strikes contravenes the positive provisions contained in the arbitration and the micellaneous sections of the 1950 and 1952 contracts. This position is untenable for several reasons.

The petitioner's first ignored the meaning of the words, "rescinded, canceled, abrogated, and made null and void." To "rescind" a previous "no strike" clause is not to positively state that the unions are permitted to strike to settle disputes in contravention of other positive parts of the contract. These words, "rescinded, canceled, abrogated, and made null and void" merely void or delete previous "no-strike" clauses from the 1950 agreement and put the parties in just the same position they would be in if no such clause had been in previous agreements.

In Words and Phrases, Permanent Edition, Volume 37, Page 151:

> "To "rescind" a contract is not merely to terminate it, but to abrogate and undo it from the beginning; not merely to release the parties from further obligation to each other in respect to the subject of contract, but to annul the contract and restore parties to relative positions which they would have occupied if no such contract had ever been made. Friedman v. Kennedy, D.C.Mun.App., 40 A.2d 72, 74."

See other definitions, "Words and Phrases", Volume 37, Pages 150, 151, 152.

In "Words and Phrases", Permanent Edition, Volume 6, Page 35:

> "The word "canceled" means to make void or invalid. Clegg v. Schvaneveldt (Utah) 8 P(2d) 620, 621." See other definitions Pages 33-41.

When we give the term, "rescinded, canceled, abrogated and made null and void" its proper meaning, then the reasoning of the Fourth Circuit in United Construction Workers vs. Haislip Baking Company, 223 Fed. Rep. 2d, 872, and of the First Circuit in W. L. Mead, Inc. vs. International Brotherhood of Teamsters, 230 Fed. Rep. 2d, 576, is appropriate to the construction of the contract which we have in this case.

And the Sixth Circuit further held:

> "This conclusion does not make meaningless the express abrogation of a no-strike clause in the 1950-52 agreement. The right to strike was preserved with respect to all disputes not subject to settlement by other methods made exclusive by the agreement. Moreover, the Unions remained (fol. 770) free from liability for spontaneous or "wildcat" strikes. Such spontaneous strikes would be the kind of "stoppages" and "suspensions of work" which the agreement made subject to the settlement procedure therin pro-

vided." (R 766. U.M.W.A. et al. vs. Benedict Coal Corporation, 259 Fed. Rep. (2d) 346.)

The rescission clause relied on by petitoners is not a positive statement permitting the strikes for the purpose of settling disputes in contravention of the other clauses of the contract.

The petitioners rely upon the majority opinion in International Union, United Mine Workers of America vs. National Labor Relations Board, 257 Fed. Rep. 2d, 211. The majority of that Court in sustaining their interpratation of the contract, gave no effect to subdivision 3 of the miscellaneous clauses of the 1950 agreement and termed it a mere "gentleman's agreement." This interpretation is challenged by the aforestated principle that an interpretation should be adopted that will render the whole agreement operative. 12 Am. Jur. 774. This interpretation by the two judges constituting the majority is not supported by the opinion of the dissenting judge, Judge Burger, in the same case. It is at variance with the interpretation put on the contract by the National Labor Relations Board in the aforestated case, and by the three judges of the Sixth Circuit that decided this case under review. This interpretation is also at variance with the reasoning of the Fourth Circuit in United Construction Workers et al vs. Haislip Baking Company, 223 Fed. Rep. (2d) 872, and with the reasoning of the First Circuit in W. L. Mead, Incorporated vs. International Brotherhood of Teamsters, 230, Fed. Rep. (2d) 576, and in which cases similar clauses were considered.

The petitioners also rely upon N.L.R.B. vs. Lion Oil Co. 352 U.S. 282. The issue was not similar in that case. That case involved the construction of Section 8(d) of the Labor Management Relations Act and the right of the Union to strike pending the modification of the contract itself. This is not the issue in this case.

CONCLUSION

For the foregoing reasons your respondent submits that

the decision of the Sixth Circuit on the question involved was sound and correct and should be upheld by this Court and that this case should be remanded for a redetermination of damages in accordance with the views expressed by the Sixth Circuit.

Respectfully submitted.

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